



August 25, 2021

Via ECF

The Honorable Denise Cote
United States District Court
Southern District of New York
500 Pearl Street, Room 1910
New York, New York 10007

Re: *Andrea Rossbach v. Montefiore Medical Center et al.*
Civil Action No. 1:19-cv-05758-DLC

Dear Judge Cote:

This firm represents Plaintiff in the above case. We write to respectfully request that the Court issue an interlocutory order to stay this matter regarding our opposition to Defendants' fee application pending a decision from the Second Circuit.

On August 25, 2021, the undersigned filed a Notice of Appeal of the Court's August 5, 2021, sanction award against Plaintiff, the Derek Smith Law Group, PLLC, and the undersigned. Ultimately, the Second Circuit may overturn the sanctions awarded entirely, which would allow the parties and Court to avoid unnecessary motion practice. Alternatively, the Second Circuit could decide to narrow the sanction award and remand the case for a different calculus, which would result in duplicative motion practice on this issue if a stay is not granted.

In deciding a motion to stay pending an appeal, courts generally consider whether “[i] the applicant will be irreparably injured absent a stay; [ii] issuance of the stay will substantially injure the other parties interested in the proceeding; [iii] the stay applicant has made a strong showing that he is likely to succeed on the merits; and [iv] the stay is in the public interest.” *Plummer v. Quinn*, No. 07 Civ. 6154 (WHP), 2008 WL 383507, at *1 (S.D.N.Y. Feb. 12, 2008). These factors are assessed on a “sliding scale,” pursuant to which “[t]he necessary ‘level’ or ‘degree’ of possibility of success will vary according to the court’s assessment of the other stay factors ... [and] [t]he probability of success that must be demonstrated is inversely proportional to the amount of irreparable injury plaintiff will suffer absent the stay.” *Thapa v. Gonzales*, 460 F.3d 323, 334 (2d Cir. 2006) (internal quotation marks omitted).

In this case, continued motion practice concerning Defendants' fee application could present continued irreparable economic and reputational harm to Plaintiff, the Derek Smith Law Group, PLLC, and the undersigned. Additionally, there would not be any harm to Defendants if Your Honor issued a stay of the proceedings, because the sanction award itself is currently being appealed to the Second Circuit, which in turn could overturn or narrow the scope of Defendants' request for sanctions thereby duplicating proceedings on this issue. Furthermore, Plaintiff, the

Derek Smith Law Group, PLLC, and the undersigned maintain a likelihood of success on appeal due to a variety of factors, including but not limited to, the fact that the Court made credibility determinations with respect to Plaintiff and Plaintiff's expert explicitly reserved for the jury; the Court's failure to adhere to the requisite legal standard and find evidence of bad faith before issuing sanctions; and the Court's failure to meaningfully consider additional evidence supplied by Plaintiff that serve to further support the legitimacy of the text messages in dispute. Finally, a stay of proceedings would be in the public interest because the possibility of dismissal or modification of the Court's sanction award could render the anticipated fee application motion practice moot or superfluous. Ultimately, it would be a waste of resources—the parties', the Court's, and the public's—to proceed with the anticipated fee application motion practice, in light of the pending appeal. *Ferring B.V. v. Allergan, Inc.*, 343 F. Supp. 3d 284, 292 (S.D.N.Y. 2018).

Accordingly, we respectfully request that the Court issue an interlocutory order to stay this matter regarding our opposition to Defendants' fee application pending a decision from the Second Circuit in an effort to avoid further harm and the likelihood of multiple appeals and duplicative motion practice. We thank Your Honor for your consideration of this request.

Respectfully submitted,

DEREK SMITH LAW GROUP, PLLC

/s/ Daniel Altaras
Daniel Altaras, Esq.
Attorneys for Plaintiff
One Penn Plaza, Suite 4905
New York, NY 10119
212-587-0760